

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 24 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MANGILAL BHERULAL VIRVAL JAIN

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner
MR MR ANAND, GP with MS AMIBEN YAGNIK, AGP for
Respondent Nos. 1 to 3,
MR SUNIL C PATEL for Respondent No. 4

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 17/02/97

ORAL JUDGEMENT

1. The petitioner - Mangilal Bherumal Virval Jain has brought under challenge the impugned detention order dated 3/10/1996 passed by the respondent no.2 being the District Magistrate u/S. 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential

Commodities Act, 1980 (for short 'PBM Act') in this petition under Article 226 of the Constitution of India.

2. The grounds on which the impugned order of detention has been passed appear at Annexure-B. They inter-alia indicate that the District Supply Officer being the Sponsoring Authority received information to the effect that the essential article of kerosene was being directed to be disposed of from the tanker received from the Indian Oil Corporation Limited by M/s. Suraj Petroleum Agency owned/managed by Dharmendrakumar N. Patel, who is alleged to have made arrangement with the retail licence holders including the petitioner for not distributing the stock of kerosene to them as required under the licence, but only the price difference to be paid to them. The retailors - licence holders including the petitioner in the first instance are alleged to have opposed against such practice suggested to them, but ultimately they indulged into the same by accepting difference at the rate of Re.1/per litre and bill for the stock of kerosene meant for them without actual delivery of such stock having been made by aforesaid Suraj Petroleum Agency. The detailed facts have been set out in the grounds of detention and they need not be reiterated here. Suffice it to say that the petitioner having indulged in the facilitation of black marketing of the stock of kerosene as set out in the grounds of detention, the petitioner was required to be preventively detained under the aforesaid provision of the PBM Act.

3. As in the petition filed by Dharmendrakumar Natvarlal Patel bearing Special Civil Application No. 8561 of 1996 here also impugned order of detention has been challenged firstly on the ground that the retractional statement as contained in the affidavit of Pirulal Gangaram Dahima has admittedly not been supplied to the petitioner. This ground of challenge to the continued detention was pressed into service and argued at length in the aforesaid Special Civil Application No. 8561 of 1996. Following observations appear in para. 11 of the decision rendered in that Special Civil Application by this Court (decided on 14-17/2/1997) :-

"It is clear from what is stated above that the copy of the affidavit (retractional statement on oath) filed by Pirulal Gangaram Dahima and placed before the detaining authority was not supplied to the petitioner. It is also not in dispute that the said affidavit was taken into consideration, but was not relied upon. The

explanation of the detaining authority is that it was not found necessary to supply copy of the affidavit of the co-detenu and, therefore, it was not supplied to the petitioner."

4. Relying upon the decisions of the Apex Court in the case of Lataben R. Uttekar v. The Commissioner of Police reported in 1995 (1) GLH 347, Ashadevi v. K. Shivraj reported in AIR 1979 SC 447, Khudiram Das v. State of West Bengal reported in AIR 1975 SC 550 and M. Ahamedkutty v. Union of India reported in (1990) 2 S.C.C. p.1 this Court decided to snap the continued detention of the said Dharmandrakumar Natvarlal Patel in Special Civil Application No. 8561 of 1996. In my opinion this petition is also required to be disposed of in the same manner.

17. The result is that the continued detention of the petitioner under the impugned order of detention will have to be snapped by holding the same as illegal.

18. The petitioner has challenged the impugned order of detention and the continued detention on other grounds also. But since the petitioner succeeds in this petition on the ground of non-supply of material documents as aforesaid, it would not be necessary to deal with the same.

19. In the result, this petition is allowed. The continued detention of the petitioner - Mangilal Bherumal Virval Jain under the impugned order of detention is directed to be put an end to and the petitioner shall be released immediately, if he is not required to be detained in any other case. Rule made absolute in the aforesaid terms.

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